IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/10/2003

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THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

W.P.No.1668 of 1997

R.Alwarappan ..... Petitioner

-Vs-

1. Tamil Nadu Civil Supplies
Corporation Ltd.
Rep. by its Chairman-cum
Managing Director
42, Thambusamy Road, Kilpauk
Chennai-600 010.

2. The Joint Managing Director
Tamil Nadu Civil Supplies
Corporation Ltd.
42, Thambusamy Road, Kilpauk
Chennai-600 010.

3. The General Managing (Administration)
Tamil Nadu Civil Supplies
Corporation Ltd.
42, Thambusamy Road, Kilpauk
Chennai-600 010.

4. The Senior Regional Manager
Tamil Nadu Civil Supplies
Corporation Ltd.
Tuticorin.

Writ petition filed under Article 226 of the Constitution of India
praying for the issue of a writ of Certiorari as stated therein.

!For petitioner : Mr.S.Kumaraswamy

^For respondents : Mr.S.Somasundram

:ORDER

The challenge in this writ petition is to the orders of the third and second respondents dated 13.6.1994 and 16.7.1995 respectively, in and by which, the petitioner was imposed with the punishment of stoppage of increment for a period of two years with cumulative effect. The third respondent passed the order dated 13.6.1994 as the authority competent to impose a major penalty on the petitioner, which order came to be confirmed by the second respondent as appellate authority in its order dated 16.7.1995.

2. The brief facts which led to the issuance of the above orders could be traced as under:
The petitioner was employed as a Superintendent in the Tamil Nadu Civil Supplies Corporation at the relevant point of time. He was issued with a charge sheet dated 19.8.1991 in which, nine charges were levelled against him. Thereafter, an enquiry is said to have been held after receipt of the petitioner□s explanation and an order of minor penalty came to be made by proceedings dated 16.12.1991 by the fourth respondent. The penalty imposed on the petitioner in the order dated 16.12.1991 was stoppage of increment for six months without cumulative effect. Apparently, the said order came to be passed by the fourth respondent in exercise of his powers as the competent authority to impose a minor penalty under Regulation 3 of Chapter V of the Tamil Nadu Civil Supplies Corporation Ltd., Employees-Service Regulations, 1 989 (hereinafter referred to as the □Regulations□). The petitioner did not challenge the said order of punishment dated 16.12.1991. However, the first respondent herein, in exercise of its powers under Regulation 13 of Chapter V of the Regulations, decided to review the punishment imposed on the petitioner when it dealt with an appeal preferred by one S.Kumarasamy, Junior Assistant. In fact, apart from the petitioner and the said Kumarasamy, two other individuals were also involved in the whole episode. Therefore, by its proceedings dated 29 .5.1992, the first respondent reopened the whole enquiry. In this context, it would be relevant to refer to Regulations 3 and 4 of Chapter V of the Regulations. While Regulation 3 deals with the procedure to impose minor penalties, Regulation 4 deals with the procedure in relation to the award of major penalties. In such circumstances, when, in the opinion of the first respondent-Board the punishment called for a suo motu review by virtue of the powers vested with it under Regulation 13 of Chapter V of the Regulations, it became incumbent upon the first and second respondents to invoke Regulation 4 of Chapter V of the Regulations to the case of the petitioner. Therefore, the third respondent was obliged to proceed afresh and follow the procedure prescribed under Regulation 4 of Chapter V of the Regulations, which necessitated the issuance of a fresh proceedings dated 17.8.1992 and call upon the petitioner to offer his explanation.

3. Mr.S.Kumaraswamy, learned counsel for the petitioner, though contended that the above-said procedure followed by the third respondent was itself quite contrary to Regulation 13 of Chapter V of the Regulations, I am of the view that the said submission so made on behalf of the petitioner cannot be accepted. A reading of Regulations 3 and 4 of Chapter V of the Regulations makes it clear that while for imposition of a minor penalty, a summary procedure is contemplated under Regulation 3, the same is not the case when it comes to the case of awarding major penalties under Regulation 4. The withholding of increment with cumulative effect without any specific period is

one of the major penalties provided under Regulation 5. In such circumstances, when, in the opinion of the first respondent, even while invoking Regulation 13 of Chapter V of the Regulations by way of a suo motu review, the major penalty was called for in the case of the petitioner for the allegations levelled against him, the third respondent was necessarily mandated to follow the procedure prescribed under Regulation 4 of Chapter V of the Regulations.

4. A reading of Regulation 4 of Chapter V of the Regulations makes it clear that while following the procedure prescribed therein, the delinquent should be informed of specific charges suitably framed with the list of documents based on which the charge came to be laid as well as the list of witnesses whose versions would form the basis of the charge. Thereafter, the delinquent should be called upon to furnish list of witnesses, if any, on the defence side within a reasonable time. The presumption to be drawn that the delinquent had no witnesses on the defence would arise only at that stage and not before. Therefore, the issuance of the fresh charge memo on 17.8.1992 in contemplation of the procedure prescribed under Regulation 4 of Chapter V of the Regulations by the third respondent cannot be found fault with.

5. The question is whether the other procedures prescribed under the other Regulations have been duly complied with in the case on hand. It is contended on behalf of the petitioner that after the petitioner□s explanation to the fresh charge memo issued on 27.8.1992, an oral enquiry was held in which, the petitioner was not furnished with either the list of documents or the list of witnesses, while he was straight away called upon to meet the questions put by the Enquiry Officer. It is also stated that the enquiry report dated 16.9.1993 based on which the order of punishment came to be imposed on 13.6.1994, was merely based on such an exercise made by the Enquiry Officer.

6. The learned counsel appearing for the respondents was also not able to produce any proceedings other than what has been placed before this Court in the form of the Enquiry Officer□s report dated 16.9.199 3. In such circumstances, it is crystal clear that the procedure contemplated under Regulation 4 of Chapter V of the Regulations were not duly followed while imposing the punishment as ordered by the third respondent in his proceedings dated 13.6.1994 which stood confirmed by the second respondent in his proceedings dated 16.7.1995. It will have to be, therefore, stated that the petitioner was put to serious prejudice by strictly not following the procedure prescribed under Regulation 4 of Chapter V of the Regulations. The very purpose of prescribing such a detailed procedure in the matter of examination of witnesses and production of records is to provide an opportunity to the petitioner to enable him to show that he was not guilty of the charges in order to warrant imposition of any major penalty as provided under Regulation 1(b) of Chapter V of the Regulations. In such circumstances, the failure to follow the mandatory procedure prescribed under Regulation 4 of Chapter V of the Regulations vitiates the punishment imposed on the petitioner by the third respondent by proceedings dated 13.6.1994, which was also confirmed by the second respondent by proceedings dated 16.7.1995. In fact, by virtue of the failure to follow the procedure prescribed under Regulation 4

of Chapter V of the Regulations, it will have to be held that even the Enquiry Officer's report dated 16.9.1993 cannot stand.
The writ petition, therefore, stands allowed setting aside the impugned proceedings dated 13.6.1994 as well as the one dated 16.7.1995 along with the report of the Enquiry Officer dated 16.9.1993. It is open to the respondents to proceed afresh against the petitioner as provided under
ksv

F.M.IBRAHIM KALIFULLA,J.

Regulation 4 of Chapter V of the Regulations, if they feel necessary.

Index: Yes
Internet: Yes
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